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## SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404 and 416

[Docket No. SSA-2018-0017]

RIN 0960-AI35

Consideration of Pain in the Disability Determination Process

AGENCY: Social Security Administration.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: We are soliciting public input to ensure that the manner in which we consider pain in adult and child disability claims under titles II and XVI of the Social Security Act (Act) remains aligned with contemporary medicine and health care delivery practices. Specifically, we are requesting public comments and supporting data related to the consideration of pain and documentation of pain in the medical evidence we use in connection with claims for benefits. We will use the responses to the questions below and any relevant research and data we obtain or receive to determine whether and how we should propose revisions to our current policy regarding the evaluation of pain.

DATES: To be sure that we consider your comments, we must receive them no later than [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method.

Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2018-0017 so that we may associate your comments with this ANPRM.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search function to find docket number SSA-2018-0017. Once you submit your comment, the system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966-2830.

3. Mail: Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Dan O'Brien, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 597-1632. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Act defines “disability” for titles II and XVI as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.<sup>1</sup> We use a five-step sequential evaluation process to determine whether a claimant who files an initial claim for benefits is disabled under the Act.<sup>2</sup> If we can make a determination or decision that a claimant is disabled or not disabled at a step, we do not go on to the next step.<sup>3</sup> If we cannot make a determination or decision at a step, we continue to the next step in the sequential evaluation process.<sup>4</sup> At various steps of the sequential evaluation process, we will consider both the medical evidence of an impairment and the claimant’s descriptions of his or her symptoms, including pain.<sup>5</sup>

Our current regulations prescribe a two-stage process for evaluating a claimant’s

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<sup>1</sup> 42 U.S.C. 423(d)(1)(A) and 1382c(a)(3)(A); see also 20 CFR 404.1505(a) and 416.905(a).

<sup>2</sup> 20 CFR 404.1520(a)(4), 416.920(a)(4), and 416.924.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> 20 CFR 404.1529 and 416.929.

pain.<sup>6</sup> At stage one, we determine whether there is objective medical evidence showing the existence of a medically determinable impairment that could reasonably be expected to produce the pain.<sup>7</sup> When the medical signs or laboratory findings show that a claimant has a medically determinable impairment(s) that could reasonably be expected to produce the pain, we proceed to stage two and evaluate the intensity and persistence of a claimant's pain based on all the evidence in the record. We consider several factors at this second stage, including:

- the objective medical evidence;
- the claimant's medical history, the clinical signs and laboratory findings, and statements about the pain's effect on the claimant;
- the claimant's daily activities;
- the location, duration, frequency, and intensity of the pain;
- any precipitating or aggravating factors;
- the type, dosage, effectiveness, and side effects of medication;
- any treatments, other than medication, the claimant receives or has received for relief of pain;
- any measures the claimant uses or has used to relieve pain (e.g., lying flat on the back, standing for 15 to 20 minutes every hour, sleeping on a board, etc.); and
- any other factors concerning functional limitations and restrictions due to pain.<sup>8</sup>

#### What is the purpose of this ANPRM?

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<sup>6</sup> Id.

<sup>7</sup> 20 CFR 404.1529(b) and 416.929(b).

<sup>8</sup> 20 CFR 404.1529(a), (c) and 416.929(a), (c).

We are soliciting public comments about our rules for evaluating the intensity and persistence of pain and documentation of pain in the medical evidence as part of the disability determination process. In addition to seeking public input on the specific questions below, we are also asking for public input to help identify research and data that will help us ensure our policy on the evaluation of pain remains aligned with contemporary medicine and health care delivery practices. We will use the responses to the questions below and any relevant research and data we obtain or receive to determine whether and how we should propose revisions to our current policy regarding the evaluation of pain.

What will we consider when we decide whether to propose revisions to our rules?

We will consider the public comments and any research or data identified in response to this solicitation. We will also consider any information we obtain through research or other activities intended to inform our policy decisions in this area, such as the National Disability Forum.<sup>9</sup>

What should you comment about?

When we evaluate the intensity and persistence of a claimant's pain, we consider all of the available evidence, including the types of evidence discussed above. We are soliciting public input, research, and data about the following:

1. Are there changes that we should consider about how we consider pain in the disability evaluation process? If so, what changes do you suggest we make?

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<sup>9</sup> Information regarding the National Disability Forum is available on our Internet site at: <https://www.ssa.gov/ndf/>.

Please provide data, research, or any other evidence supporting your suggestions where applicable.

2. Within the United States, which standard scales, questionnaires, or other methods to evaluate the intensity and persistence of pain that are commonly accepted in the medical community do you recommend we consider and why? What information exists about the efficacy or accuracy of those scales, questionnaires, or other methods?
3. How is pain and documentation of pain in the medical evidence assessed in other Federal, State, and private disability programs?
4. Should we evaluate chronic<sup>10</sup> pain differently than acute<sup>11</sup> pain? If so, why and how?
5. Should we evaluate nociceptive<sup>12</sup> pain differently than neuropathic<sup>13</sup> pain? If so, why and how? Please submit research or data that support your recommendation.
6. What information and evidence is available on the effectiveness and side effects of the traditional and alternative modalities for treating pain that we should consider?
7. Can health care utilization and treatment regimens employed by physicians to manage patient pain provide objective insights into the intensity and persistence

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<sup>10</sup> Pain that “persist[s] over a long period of time.” *Chronic*, Dorland’s Illustrated Medical Dictionary (31st ed. 2007).

<sup>11</sup> “[A] short and relatively severe course” of pain. *Acute*, Dorland’s Illustrated Medical Dictionary (31st ed. 2007).

<sup>12</sup> Pain that pertains to a nociceptor, which is a receptor for pain caused by injury to body tissues from physical chemical stimuli. *Nociceptive, Nociceptor*, Dorland’s Illustrated Medical Dictionary (31st ed. 2007).

<sup>13</sup> Pain that pertains to, or is characterized by, a functional disturbance or pathological change in the peripheral nervous system. *Neuropathic, Neuropathy*, Dorland’s Illustrated Medical Dictionary (31st ed. 2007).

of pain? When should those regimens not be an indication of the severity of an individual's pain?

8. Is there any additional information that we should consider when we evaluate pain in our disability program?

Will we respond to your comments?

We will consider all relevant public comments we receive in response to this notice, but we will not respond directly to them. If we decide to propose specific revisions to our rules, we will publish a notice of proposed rulemaking in the Federal Register, and you will have a chance to comment on any revisions we propose.

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Blind, Disability benefits, Supplemental Security Income, Reporting and recordkeeping requirements, Social Security.

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Nancy A. Berryhill,  
Acting Commissioner of Social Security.  
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